

# Draft Minutes of the Alcoholic Beverage Appeals Commission Meeting

October 5, 2017

Commission Members Present

Michael Cebrick	Chairman – Kent County
Frederick Duffy	Commissioner – Sussex County
Michael Finnigan	Commissioner – New Castle County

## MEETING LOCATION:

Third Floor Conference Room, Delaware Department of Justice, 102 W. Water St., Dover, DE

## CALL TO ORDER:

Chairman Cebrick called the meeting to order at 11:05 a.m.

Old Business : The Commissioners reviewed and signed the written Decision and Order for the appeal of World Class Wholesale, Inc.

New Business: Motion for Reargument in appeal of Milfor, Inc.

Chairman Cebrick requested DAG Kerber to provide legal advice on the Motion for Reargument filed by Back Bay Liquors, the Response in Opposition filed by Milfor and the Supplemental Exhibits filed by Back Bay Liquors. DAG Kerber advised that:

- 1) Motions for Reargument are not addressed in the Delaware Code provisions that apply to the Appeals Commission and the Appeals Commission does not have rules.
- 2) The civil rules for the Delaware state courts do provide for a Motion for Reargument in Rule 59(e).
- 3) Rule 59(e) states that the court will determine from the motion and answer whether reargument should be granted. As the Appeals Commission has received a Motion for Reargument and Response in Opposition, it would be consistent with Rule 59(e) to decide the motion on the written submissions without additional oral argument.
- 4) According to the Delaware Superior Court in *Reid v. Hindt*, 2008 WL 2943373:

The standard of review for a Rule 59(e) motion for reargument is well-established. A motion for reargument will usually be denied unless the Court has “overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.” A motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised. The movant “has the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice.”

- 5) Back Bay Liquors asserts that a controlling fact was overlooked because there is no distance measurement in the record based on the 2017 site plan.
- 6) Milfor points out that the record includes testimony at the Commissioner's Hearing by Milfor's engineer that his distance calculations coincide with the 2017 site plan.
- 7) Back Bay Liquors did not argue at the Appeals Commission hearing that the distance calculation using the 2017 site plan would be less than 0.9 miles.
- 8) The Supplemental Exhibits filed by Back Bay Liquors attempt to supplement the record that the Appeals Commission is to review on appeal under 4 Del. C. 541(c) and raise a new argument not made at the Appeals Commission hearing.

After opportunity for discussion, a motion to deny the Motion for Reargument was made (Duffy), seconded (Finnigan), and approved by unanimous vote (3-0).

CLOSE OF MEETING:

With no further business to discuss a motion to adjourn was made (Finnigan), seconded (Duffy) and approved unanimously (3-0).

The meeting was adjourned at 11:18 a.m.